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Supreme Court, U.S.
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NO. 94-1015

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1994

DANIEL G. GELLERT,
Petitioner,

V.

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF FLORIDA,
Respondent

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

PETITIONER'S RESPONSE BRIEF

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PETITIONER'S REPLY BRIEF

Respondent Travelers Insurance Company's argument highlights why this Court should grant the petition. Respondent begins with its own version of QUESTION PRESENTED, and has moved impermissibly to take over this pro se petition, for its own purposes, and would have this Court not address Petitioner's due process rights, which resulted from the trial judge being under an on going federal criminal investigation.

Respondents' claim that Petitioner had "adequate remedy", when his proper summary judgment motions are continued to be denied to date, is indeed spacious and unreal.

Other arguments, which allege in this petition, a jurisdictional issue as dispositive as a motion to remand, is fallacy, and respondents' "abundance of caution" and motion to strike, are fatal to respondents and support the entry of the motions for summary judgments as a matter of law.

This petition, should be considered by this Court for certiorari or as an Extraordinary Writ, based upon these facts.

Petitioner was denied a fair and impartial hearing, before the district court and appeals court. All citizens, all parties in litigations should be granted judges free from the taint of criminal wrong doing, which clearly did not happen in this cause, and this Court should resolve this issue.

PETITIONER'S RESPONSE

Respondents' silence on the key issues of this petition is deafening; respondents have carved out Questions Presented for Review which limit the petitioner's rights to be heard by this Court, and provide for a complete denial of petitioner's rights under the Constitution.

Petitioner's instant cause call for an exercise of this Court's power of supervision, to examine and rule upon the duty of the judiciary in cases where the presiding trial judge is under felony criminal investigation. In this cause the trial judge was investigated by the FBI, Department of Justice and a Federal Grand Jury for felony criminal violations of federal statutes. The integrity of the district court had a lack of credibility, impartiality necessary to rule upon Petitioner's summary judgment motions.

Respondent Air Line Pilots Association, ("ALPA"), while informing this Court that Petitioner did raise issues of the trial court's criminal legal problems, the Appeals Court failed to grant relief. Respondent in footnote 1/ states: "Petitioner's scandolous accusation against the district court judge . . . Petitioner's, unsuported, irrational, and tenuous claims" are false, impeached by the reversal of 14 trials that Judge K. Michael Moore had at same and exact period as petitioner's cause, while under criminal investigation. App. 1, (Miami Herald article covering the September 9, 1994 Order.)

Respondent ALPA's total disregard for the truth, the obvious disregard for the integrity of the judiciary is only secondary to its dishonesty in dealing with its own members, and toward the employees that it owed duty of fair representation to, under the contract, the Constitution.

STATEMENT ON JURISDICTION

A. Rule 10 invokes the inherent duty of this Court to exercise power in supervising courts below, when a sitting judge in the federal judiciary is the subject of a criminal probe, it raises issues of basic judicial integrity. B. Rule 20 provides for the instant petition to rise to a level of an Extraordinary Writ, to be an aid of this Court's appellate jurisdiction, certainly a review of a criminal investigation of a sitting judge must rise to the level of sufficient exceptional circumstance to warrant the exercise of this Court's discretionary powers.

While respondents would minimize this petition, and reduce the gravamen to the ticking of a clock, Petitioner did file for assistance from the Appeals Court, App. 2, and a protective order was issued. Respondent's opposition is groundless. This Court has jurisdiction.

RESPONSE TO STATEMENT OF THE CASE

Respondents are impeached by their own silence, Respondents Solicitor General, in representing Judge K. Michael Moore, the United States, the Department of Justice could not find a voice to speak, Eastern Airlines, Inc., and the Pension Benefit Guaranty Corporation are not opposing the petition.

Respondent Travelers Insurance Company, ("Travelers"), has defrauded Petitioner of millions, the Pension Benefit Guaranty Corp., ("PBGC"), is defrauding Petitioner of millions in vested pension benefits, Eastern Airlines, Inc., ("Eastern"), used the Constitutionally protected forced collection of union dues to move against an airline pilot employee who refused to join an on going criminal enterprise to defraud the United States and the passengers of Eastern. Respondent ALPA violated its duty of fair representation,

and committed fraud in filing a false request to demand Petitioner's discharge, when in fact Petitioner had proper authorization for the voluntary deduction of union dues, and Petitioner's cause clearly has invoked Constitutional issues and protection under the First, Fifth and Fourteenth Amendments, which respondents would ignore.

Petitioner had the right under Rule 56 to seek a summary judgment on this basis, which provided for the entry of his motions for summary judgments, both as to meeting the substantive law requirements, and the material fact issue, which provides that the respondents' have no genuine issues for a trial, and Petitioner is entitled to these judgments as a matter of law.

Interestingly, respondents have not been able to provide even one case in support of the blatant denial of Petitioner's Rule 56 rights, and the petition is unopposed.

Respondent's assertions that no proper response to a Rule 56 motion is required while some motions are pending, is impeached by Rule 56, and its 1946 Amendment.

Further, some district court case, which is not a precedent, and which deals with an issue of jurisdiction based upon a motion to remand a case to a state court, can not be considered as authority to file a motion to strike a motion for summary judgment.

Rule 56, and Local Rules 7.1, 7.5, are controlling herein.

Respondent Traveler's claim is false, Petitioner has not received a remedy in the district court, Petitioner's proper motions for summary judgments have not been granted to this date, and it is not a mute issue, but is a viable request pending before this Court, herein.

The instant petition does not frustrate the appellate process, it seeks a remedy.

RESPONSIVE ARGUMENT

Petitioner clearly moves this Court for relief, and for a decision which will examine the rights of citizens to courts of integrity, courts free from the shadow of criminal investigation.

In this cause, Judge K. Michael Moore failed to disclose and disqualify himself from proceedings in which his impartiality can be reasonably questioned.

The judge, and the Department of Justice impermissibly kept the criminal investigation of Judge Moore a secret, failed to disclose this fact to Petitioner, failed to provide an opportunity for Petitioner to seek recusal, prior to the unjust denial of Petitioner's proper motions for Rule 56 summary judgments.

Based upon the foregoing, this Court should grant a remedy, fashion an appropriate relief, and make this Petitioner's case whole, and remand the issues on the summary judgments.

The Court can remand the issue of the summary judgments to the district court, with clear instructions to assign a new judge, to consider Petitioner's motions for summary judgments in the specific constraints of Rule 56, Federal Rules of Civil Procedures, and Local Rules 7.1 and 7.5. Vacate the judgment entered in Case No. 90-1113, and the adverse Bankruptcy decision in Case No. 89 B10448, under Rule 16.1, to remedy Petitioner's right to a fair and impartial hearing.

Also, this Court can consolidate Petitioner's other appeal, Case No. 89-5378, Appendix 4 and 5. Rule 11 authorizes this action, since that cause has been stayed by bankruptcy, and that case is in its present form as in Appendix 4 and 5.

Appendix 3, demonstrates the inability of Petitioner to recover from the Eastern estate in the U. S. Bankruptcy Court.

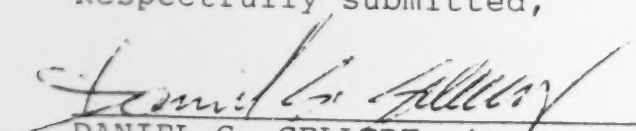
CONCLUSION

In this cause, four giants, each having a special duty to Petitioner, have confederated, and defrauded him of millions, violated his undeniable Constitutional rights under the First, Fifth and Fourteenth Amendments, and have opposed this petition. Respondents' opposition is veneer, lacking substance.

Claims of untimeliness, adequate remedy by a future appeal is an empty assertion, Petitioner's recovery as to the Eastern estate is over. A hostile district court is waiting for the Petitioner, he challenged that court.

WHEREFORE, based upon the foregoing reasons and authorities, Petitioner respectfully requests that this Petition be **granted.**

Respectfully submitted,



DANIEL G. GELLERT, in pro se